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09/846,994	05/01/2001	Richard E. Hunter	0095-194	3915

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MICHAEL H JESTER
505 D GRAND CARIBE CAUSEWAY
CORONADO, CA 92118

EXAMINER

HWU, DAVIS D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/846,994
Filing Date: May 01, 2001
Appellant(s): HUNTER ET AL.

MAILED

MAR 28 2007

Group 3700

Michael H. Jester
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 20, 2007 appealing from the Office action mailed January 19, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The 35 USC paragraph 112, second paragraph rejection of January 19, 2007 has been withdrawn.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,375,768

Clark

12-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US Patent 5,375,768).

Clark '768 shows a sprinkler comprising a riser 16 for receiving a pressurized fluid, a nozzle 22, means for mounting the nozzle as recited (see Figure 1), a turbine 56 mounted for rotation inside the riser, drive means 26 for connecting the turbine to the nozzle as recited, and a valve that prevents by selectively re-directing the pressurized fluid around the turbine over-spinning of the turbine (column 3, lines 36-54). The valve is capable of preventing the over-spinning regardless of the type of pressurized fluid since it acts on fluid pressures.

(10) Response to Argument

Clark '768 states that this sprinkler has a valve 62 that prevents over-spinning of the turbine by selectively re-directing pressurized fluid around the turbine as stated in column 3, lines 36-54. As water pressure increases the valve 62 opens further to restrict flow into the turbine and allowing a greater amount of water to flow around and by-pass the turbine (column 3, lines 41-45). The examiner concedes that Clark '768 discloses the fluid as water only, however, since Clark '768 states that since this valve 62 operates on pressures, it is fully capable of carrying out the same function regardless of whether the fluid is water, air, or a combination of both. It is known in the art that sprinklers are "winterized" before the cold weather sets in order to prevent damage to the sprinkler. This is normally done by blowing high pressure air through the sprinkler to

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expel the residual water in the sprinkler. Thus, during the winterizing process, an operator selectively blows air through the sprinkler and under normal operating conditions, an operator selectively turns on the water supply to allow the sprinkler to irrigate an area. Clark '768 states in column 3 lines 41-50 that as water pressure increases, valve 62 opens further to restrict the flow of water into the turbine and allowing a greater amount of water to by-pass the turbine which prevents over-spinning of the turbine. Thus, since the valve operates on pressure, the valve would open further to allow fluid to bypass the turbine to prevent over-spinning if the fluid was also air or a combination of air and water and as such, one having ordinary skill in the art could expect a reasonable expectation of success. Therefore, since the structural limitations of the prior art device are the same of those of the device of the instant invention and the prior art device operates the same way as the device of the instant invention (through fluid pressures regardless of the type of fluid), the instant claim 1 is anticipated by Clark '768.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Davis Hwu, Primary Examiner

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Conferees:

Kevin Shaver, SPE

Handwritten signature of Kevin Shaver in cursive script.

Eric Keasel, SPE

Handwritten signature of Eric Keasel in cursive script.